

HOUSE BILL No. 1273

DIGEST OF INTRODUCED BILL

Citations Affected: IC 21-9.

Synopsis: Family college savings plan. Renames the family college savings plan the college choice plan. Conforms definitions used in the education savings program law to recent changes to the federal enabling statute. Removes provisions imposing a maximum account balance and a penalty for a distribution that is not used to pay qualified higher education expenses. Repeals the following: (1) several definitions; (2) a statute concerning the investment policies of the program; (3) the requirement that contributions be made in cash only; (4) the prohibition on an account owner directing the investment of the contributions; and (5) the exemption from state income taxation of a distribution from the education savings program.

Effective: Upon passage.

Klinker, Atterholt, Grubb, Scholer

January 14, 2002, read first time and referred to Committee on Ways and Means.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1273

A BILL FOR AN ACT to amend the Indiana Code concerning higher education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 21-9-1-1, AS AMENDED BY P.L.85-2000,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 1. The following are the purposes of this
4 article:

5 ~~(1) To encourage elementary and secondary students in Indiana~~
6 ~~to achieve high standards of performance and establish lifelong~~
7 ~~habits of fiscal responsibility through savings.~~

8 ~~(2) (1)~~ To encourage education and the means of education.

9 ~~(3) (2)~~ To encourage attendance at higher education institutions.

10 ~~(4) (3)~~ To provide families additional means of striving for higher
11 education through ~~the Indiana family college savings programs an~~
12 **education savings program** that may be established under this
13 article.

14 ~~(5) (4)~~ To help provide the benefits of higher education to the
15 people of Indiana.

16 ~~(6) (5)~~ To promote the economic development of the state by



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creating opportunities for a more highly educated workforce.

~~(7)~~ (6) To increase employment opportunities in Indiana.

~~(8)~~ (7) To encourage a working partnership among the people of Indiana, including Indiana families, and elementary and secondary schools, higher education institutions, financial institutions, and state government in furthering a greater rate of savings and greater participation in higher education.

SECTION 2. IC 21-9-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. "Account" or "individual account" means ~~an individual~~ a trust account or a savings ~~any other~~ account **of an education savings program.**

SECTION 3. IC 21-9-2-4, AS AMENDED BY P.L.25-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. "Account owner" means the individual, ~~(or individuals)~~ **an emancipated minor, a trust, an estate, a partnership, an association, a company, a corporation, or a qualified custodian under the Uniform Transfers to Minors act (IC 30-2-8.5) that is designated at the time an account is opened as having the right to do the following:**

- (1) Select or change the designated beneficiary of an account.
- (2) Designate a person other than the designated beneficiary as a person to whom funds may be paid from the account.
- (3) Receive distributions from the account if no other person is designated.

SECTION 4. IC 21-9-2-9.5, AS ADDED BY P.L.25-1999, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.5. "Contribution" means a payment directly allocated to an account for the benefit of an account beneficiary or used to pay ~~late fees or administrative~~ fees associated with the account.

SECTION 5. IC 21-9-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. "Contributor" means any individual, ~~corporation, association, trust, limited liability company, or partnership~~ **emancipated minor, trust, estate, partnership, association, company, corporation, or qualified custodian under the Uniform Transfers to Minors act (IC 30-2-8.5)** that makes a deposit for the benefit of an account beneficiary.

SECTION 6. IC 21-9-2-11, AS AMENDED BY P.L.85-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. "Education savings program" means: ~~an education savings~~

- (1) a trust program; or
- (2) any other program established under IC 21-9-3 that

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1 **qualifies as a qualified state tuition program under Section**
 2 **529 of the Internal Revenue Code.**

3 SECTION 7. IC 21-9-2-14 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. "Financial
 5 institution" means a bank, a commercial bank, a national bank, a
 6 savings bank, a savings and loan, a thrift, a credit union, an insurance
 7 company, a trust company, an investment company, a mutual fund, or
 8 similar entity that

9 ~~(1)~~ meets the qualifying requirements established by the authority.

10 **and**

11 ~~(2) if applicable, agrees to abide by the qualifying requirements~~
 12 ~~for a savings account under IC 21-9-9.~~

13 SECTION 8. IC 21-9-2-16 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. ~~(a) "Higher~~
 15 ~~education institution" means a postsecondary educational institution.~~

16 ~~(b) Notwithstanding subsection (a),~~ For purposes of ~~the family~~
 17 ~~college savings programs~~ **an education savings program** established
 18 under this article, "higher education institution" means a postsecondary
 19 educational institution that meets the following requirements:

20 (1) Is authorized by law to provide a program of education beyond
 21 the high school level.

22 (2) Admits as regular students only individuals having a
 23 certificate of graduation from a high school or the recognized
 24 equivalent of such a certificate.

25 (3) Provides an educational program:

26 (A) for which the higher education institution awards a
 27 baccalaureate or an associate degree;

28 (B) in which admission is contingent upon the prior attainment
 29 of a baccalaureate degree or the equivalent, for which the
 30 higher education institution:

31 (i) awards a postgraduate degree; or

32 (ii) provides not less than a two (2) year program that is
 33 acceptable for full credit toward a postgraduate degree; or

34 (C) of a two (2) year duration in engineering, mathematics, or
 35 the physical or biological sciences, that is designed to prepare
 36 the student to work as a technician and in a semiprofessional
 37 level in an engineering, a scientific, or other technological
 38 field that requires the understanding and application of basic
 39 engineering, scientific, or mathematical principles or
 40 knowledge.

41 (4) Is accredited by a regional accrediting agency or association
 42 or by an organization recognized by the United States Department

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of Education, or, if not so accredited is an institution whose credits are accepted on transfer by not less than three (3) institutions that are accredited by a regional accrediting agency or association or by an organization recognized by the United States Department of Education, with the credits accepted on the same basis as if the credits were transferred from an accredited institution.

SECTION 9. IC 21-9-2-16.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 16.5. "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States as amended from time to time.**

SECTION 10. IC 21-9-2-17.5, AS ADDED BY P.L.25-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.5. (a) "Member of the family" means an individual who is one (1) of the following relatives of a designated beneficiary:

- (1) A lineal descendant of the designated beneficiary.
 - (2) A lineal ancestor of the designated beneficiary.
 - (3) A brother, sister, stepbrother, or stepsister of the designated beneficiary.
 - (4) A stepparent of the designated beneficiary.
 - (5) A stepchild of the designated beneficiary.
 - (6) A niece or nephew of the designated beneficiary.
 - (7) An aunt or uncle of the designated beneficiary.
 - (8) An individual related to the designated beneficiary as follows:
 - (A) A daughter-in-law.
 - (B) A son-in-law.
 - (C) A mother-in-law.
 - (D) A father-in-law.
 - (E) A sister-in-law.
 - (F) A brother-in-law.
 - (G) A first cousin.**
 - (9) The spouse of the designated beneficiary or the spouse of an individual described in subdivisions (1) through (8).
- (b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms brother and sister include a brother or sister by the half blood.

SECTION 11. IC 21-9-2-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. "Program account" means the program account of the trust fund established under

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1 IC 21-9-5. A program account is comprised of:

- 2 (1) ~~individual~~ trust accounts; and
 3 (2) other contributions or money received in trust by the authority
 4 together with allocable earnings (whether interest, gains, or
 5 dividends) and other contributions appropriately made or money
 6 properly allocable to the program account.

7 SECTION 12. IC 21-9-2-19.5, AS ADDED BY P.L.25-1999,
 8 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 UPON PASSAGE]: Sec. 19.5. (a) "Qualified higher education
 10 expenses" means the following expenses required for the enrollment or
 11 attendance of a designated beneficiary at a higher education institution:

- 12 (1) Tuition.
 13 (2) Fees.
 14 (3) Costs of books, supplies, and equipment.
 15 (4) Room and board.

16 (b) The amount of room and board treated as a qualified higher
 17 education expense may not exceed the amount set forth in the
 18 applicable federal regulations: **has the meaning set forth in Section**
 19 **529 of the Internal Revenue Code.**

20 SECTION 13. IC 21-9-2-19.7, AS ADDED BY P.L.25-1999,
 21 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 UPON PASSAGE]: Sec. 19.7. "Rollover distribution" means a
 23 distribution or transfer from an account of a designated beneficiary that
 24 is transferred to or deposited within sixty (60) days of the distribution
 25 or transfer into an account of another individual who is a member of
 26 the family of the designated beneficiary. A distribution is not a rollover
 27 distribution unless there is a change in the beneficiary: **rollover as**
 28 **defined in Section 529 of the Internal Revenue Code.**

29 SECTION 14. IC 21-9-2-22.1 IS ADDED TO THE INDIANA
 30 CODE AS A NEW SECTION TO READ AS FOLLOWS
 31 [EFFECTIVE UPON PASSAGE]: Sec. 22.1. **"Trust account" means**
 32 **a trust account established by a contributor in the trust program**
 33 **by or for the benefit of an account beneficiary.**

34 SECTION 15. IC 21-9-2-23 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. "Trust fund"
 36 means the ~~Indiana family college savings~~ trust fund created under
 37 IC 21-9-5 for purposes of the ~~Indiana family college savings~~ **any** trust
 38 program under IC 21-9-7 and IC 21-9-8.

39 SECTION 16. IC 21-9-3-3, AS AMENDED BY P.L.85-2000,
 40 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 UPON PASSAGE]: Sec. 3. The authority may establish ~~the following~~
 42 **any number of** education savings programs.

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(1) ~~The family college savings programs, including the following:~~

(A) ~~The trust program.~~

(B) ~~The account program.~~

(2) ~~Other savings programs and services consistent with the purposes and objectives of this article.~~

SECTION 17. IC 21-9-4-7, AS AMENDED BY P.L.25-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. In addition to any power granted by this article, the board has all powers necessary or convenient to carry out and effectuate the purposes and objectives of this article, the purposes and objectives of the education savings programs, and the powers delegated by law or executive order, including the following powers:

(1) To develop and implement the education savings programs and, notwithstanding any provision in this article to the contrary, other ~~savings programs~~ and services consistent with the purposes and objectives of this article, through:

(A) rules **or emergency rules** adopted under IC 4-22-2; or

(B) rules, guidelines, procedures, or policies established by the board and approved by the higher education commission.

(2) To conform the education savings programs and, notwithstanding any provision in this article to the contrary, ~~other savings programs~~ and services consistent with the purposes and objectives of this article, to the requirements of a qualified state tuition program set forth in Section 529 of the Internal Revenue Code and all applicable federal regulations, through:

(A) rules **or emergency rules** adopted under IC 4-22-2; or

(B) guidelines, procedures, or policies established by the board.

(3) To retain professional services, including the following:

(A) Financial advisers and managers.

(B) Custodians and other fiduciaries.

(C) Investment advisers and managers.

(D) Accountants and auditors.

(E) Consultants or other experts.

(F) Actuarial services providers.

(G) Attorneys.

(4) To establish minimum account deposit amounts (both initial and periodic).

(5) To employ persons, if the board chooses, and as may be necessary, and to fix the terms of their employment.

(6) To recommend legislation to the governor and general assembly.

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(7) To apply for designation as a tax exempt entity under the Internal Revenue Code.

(8) To adopt such rules, bylaws, procedures, guidelines, and policies as are necessary to carry out the education savings programs ~~and other savings programs~~ and services and the authority's management and operations.

(9) To sue and be sued.

(10) To provide or facilitate provision of benefits and incentives for the benefit of qualified beneficiaries, account owners, contributors, or account beneficiaries as the board's resources allow or as are directed or provided for by the general assembly.

(11) To conform the education savings programs ~~and other savings programs~~ to federal tax advantages or incentives, as in existence periodically, to the extent consistent with the purposes and objectives of this article.

(12) To interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly in light of the purposes and objectives of this article.

(13) To charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction under an education savings program ~~or other savings program~~ or services.

(14) To have perpetual succession.

SECTION 18. IC 21-9-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. The authority shall prepare an annual report for the education savings programs ~~and other savings programs~~ and services and promptly transmit the annual report to the governor and the general assembly. The authority shall make available, upon request, copies of the annual report to qualified beneficiaries, account owners, and the public.

SECTION 19. IC 21-9-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The authority may accept gifts, bequests, donations, and devises of personal and real property:

(1) as trustees for the maintenance, use, or benefit of the authority, the education savings programs, or the endowment fund; or

(2) to be administered for other public or charitable purposes for the benefit or use of ~~qualified beneficiaries~~, account owners or account beneficiaries.

(b) The authority may receive, accept, hold, administer, and use any property transferred to the authority by gift, bequest, donation, or

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devise in accordance with the terms, conditions, obligations, liabilities, and burdens imposed on the gift, bequest, donation, or devise if, in the judgment of the board, the action is in the best interest of the authority, the education savings programs, the endowment fund, ~~qualified beneficiaries~~, account owners, contributors, or account beneficiaries, as applicable.

(c) The authority may accept a gift, devise, donation, or bequest made for the purpose of providing an annuity on conditions consistent with the conditions set forth in IC 20-12-4-2 (relating to boards of trustees of state educational institutions).

(d) The authority may, if not inconsistent with the terms and conditions of a gift of real property:

- (1) sell, convey, or otherwise dispose of the real property; and
- (2) invest, reinvest, or use the proceeds as, in the judgment of the board, is of the greatest benefit to the authority, the education savings programs, the endowment fund, ~~qualified beneficiaries~~, account beneficiaries, and account owners.

(e) When acting under the powers granted by this article and also with respect to the money in the endowment fund and the program account as provided in IC 21-9-5 and IC 21-9-7, the members serve as trustees of private trusts, subject to the terms and conditions of the trust program or the gift, bequest, donation, or devise and law applicable to private trusts.

SECTION 20. IC 21-9-7-1, AS AMENDED BY P.L.25-1999, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. In addition to any other powers granted by this article, the board has all powers necessary or convenient to carry out and effectuate the purposes and objectives of this chapter **and** IC 21-9-8, ~~and IC 21-9-9~~; the purposes and objectives of ~~the family college savings programs~~ **an education savings program** that may be established under this article, and the powers delegated by other laws or executive orders, including the following:

(1) To establish policies and procedures to govern distributions from accounts that are not:

- (A) made on account of the death or disability of an account beneficiary;
- (B) made on account of the receipt of a scholarship (or allowance or payment described in Section 135(d)(1)(B) or (C) of the Internal Revenue Code) by the account beneficiary to the extent the amount of the distribution does not exceed the amount of the scholarship, allowance, or payment; or
- (C) ~~rollover distributions~~. **rollovers.**



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(2) To establish penalties for withdrawals of money from accounts that are not used exclusively for the qualified higher education expenses of an account beneficiary unless a circumstance described in subdivision (1) applies.

(3) To establish policies and procedures regarding the transfer of individual accounts and the designation of substitute account beneficiaries.

(4) To establish policies and procedures for withdrawal of money from accounts for, or in reimbursement of, qualified higher education expenses.

~~(5) To establish policies and procedures regarding recapture of all or a part of prior or current benefits or incentives allocated or allocable to accounts; including, in appropriate circumstances in the board's judgment, recapture as a precondition to withdrawal.~~

~~(6)~~ (5) To enter into agreements with account owners, account beneficiaries, and contributors, with the agreements naming:

(A) the account owner; ~~who must be an adult or emancipated minor;~~ and

(B) the account beneficiary. ~~who may also be the account owner, if qualified.~~

~~(7)~~ (6) To establish accounts for account beneficiaries. However:

(A) the authority shall establish a separate account for each account beneficiary; and

(B) an individual may be the beneficiary of more than one (1) account.

~~(8)~~ (7) To enter into agreements with financial institutions relating to accounts as well as deposits, withdrawals, penalties, ~~recaptures of benefits or incentives;~~ allocation of benefits or incentives, and transfers of accounts, account owners, and account beneficiaries.

~~(9)~~ (8) To conform the ~~trust program and the account education savings~~ program to federal tax advantages or incentives, as the advantages or incentives may exist periodically, to the extent consistent with the purposes and objectives of this article.

~~(10)~~ (9) To interpret, in rules, policies, guidelines, and procedures, the provisions of this article broadly considering the purposes and objectives of this article.

SECTION 21. IC 21-9-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The amount of money available in an ~~individual~~ account and the proposed use of money in an ~~individual~~ account on behalf of an account beneficiary may not be considered by the state student assistance commission

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under IC 20-12-21 or IC 20-12-21.7 when determining award amounts under a program administered by the state student assistance commission.

SECTION 22. IC 21-9-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. An ~~individual~~ account is not an asset for the purposes of IC 6-4.1-2.

SECTION 23. IC 21-9-7-7, AS ADDED BY P.L.25-1999, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. Funds held in the family college savings trust program or the family college savings account program **an account of an education savings program that may be established under this article** may not be used by an account owner or account beneficiary as security for a loan.

SECTION 24. IC 21-9-7-8, AS ADDED BY P.L.25-1999, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Contributions to an ~~individual~~ account may not exceed the amount necessary to provide for the qualified higher education expenses of the account beneficiary.

(b) The authority shall adopt rules **or emergency rules** under IC 4-22-2 to determine the maximum account balance applicable to all accounts of account beneficiaries with the same expected year of enrollment. ~~The maximum account balance may not exceed the amount determined by actuarial estimates that is necessary to pay the account beneficiary's qualified higher education expenses for five (5) years of enrollment at the highest cost institution identified by the authority.~~

SECTION 25. IC 21-9-7-9, AS ADDED BY P.L.25-1999, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. ~~(a)~~ The authority ~~shall~~ **may** adopt rules **or emergency rules** under IC 4-22-2 to establish a penalty for a distribution that is not used exclusively for the qualified higher education expenses of an account beneficiary. However, the authority may not establish a penalty for distributions described in IC 21-9-7-1(1).

~~(b) The penalty imposed under this section must equal at least ten percent (10%) of the earnings portion of the distribution.~~

SECTION 26. IC 21-9-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) **The board shall establish a trust program known as the college choice plan.**

(b) The board shall administer ~~the any~~ trust fund **established under this article, including the college choice plan,** in a manner designed to be actuarially sound, so that the assets of the trust fund are sufficient to defray the obligations of the trust fund, including the program

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1 account.

2 SECTION 27. IC 21-9-8-2 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The money
4 received under the trust program, **including the college choice plan**,
5 by the authority from account owners and contributors for the benefit
6 of account beneficiaries shall be deposited in the program account.

7 (b) Any appropriations made by the general assembly for:
8 (1) operating, administrative, and capital expenses;
9 (2) benefits and incentives; or
10 (3) any other purpose related to the trust program or the trust
11 fund;
12 shall be deposited in the administrative account.

13 (c) The money received under the trust program by the authority by
14 gift, bequest, donation, or devise or from a source that is not described
15 in subsection (a) or (b) shall be deposited:

16 (1) in the endowment fund for the benefit of the trust program; or
17 (2) to individual accounts as determined by the board to be
18 appropriate.

19 (d) The board may divide the trust fund into further separate
20 accounts. The accounts of the trust fund may be divided into separate
21 subaccounts as the board may determine periodically.

22 SECTION 28. IC 21-9-10-2, AS AMENDED BY P.L.15-2001,
23 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
24 UPON PASSAGE]: Sec. 2. (a) ~~Individual~~ Accounts and all earnings or
25 interest on accounts are exempt from taxation in Indiana to the extent
26 that those accounts, earnings, and interest are exempt from federal
27 taxation under ~~federal law~~, **the Internal Revenue Code**, subject to any
28 penalties that are established for education savings programs under this
29 article.

30 (b) Distributions under IC 6-3-2-19 from an ~~individual~~ account used
31 to pay qualified higher education expenses are exempt from the
32 adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7.

33 SECTION 29. THE FOLLOWING ARE REPEALED [EFFECTIVE
34 UPON PASSAGE]: IC 21-9-2-5; IC 21-9-2-7; IC 21-9-2-10.5;
35 IC 21-9-2-13; IC 21-9-2-17; IC 21-9-2-19; IC 21-9-2-22; IC 21-9-5-6;
36 IC 21-9-7-5; IC 21-9-7-6; IC 21-9-9; IC 21-9-10-2.

37 SECTION 30. **An emergency is declared for this act.**

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